



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 9823287

Date: OCT. 16, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a wind erosion researcher, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and a brief asserting that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.⁴ The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

From August 2008 until June 2015, the Petitioner worked as a graduate research assistant in the Department of Biological and Agricultural Engineering at [REDACTED]. He later served as a postdoctoral research fellow in the Department of Earth and Environmental Science at [REDACTED] University from October 2015 until July 2017. Since August 2019, the Petitioner has been employed as a mathematics teacher for [REDACTED] Public Schools in Maryland.⁵ As outlined below, we agree with the Director that the Petitioner has not sufficiently demonstrated eligibility for a national interest waiver under the *Dhanasar* analytical framework.

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner indicated that he intends to continue his research aimed at using [REDACTED] [REDACTED] shelter for agricultural lands against wind erosion events," "open-source software packages for computational fluid dynamics (CFD) simulation in validating air and particle flow across [REDACTED]" and [REDACTED] and [REDACTED] tracers for wind erosion" analyses. In addition, he stated that his proposed work involves "numerical and CFD simulation of wind erosion tracers in [REDACTED] environmental conditions," "assessment of wind erosion in drylands during [REDACTED] environment using remote sensing," "air quality monitoring in areas affected by [REDACTED]" and "use of an open-source software package for analysis of remote sensing data for wind erosion research." The Petitioner further explained that his proposed research includes "development and creation of a mobile application for air quality monitoring, wind erosion, and remote sensing data consolidation."

The record demonstrates that the Petitioner's proposed endeavor has substantial merit and national importance. For example, the record includes a letter [REDACTED] professor of forestry at [REDACTED] explaining that the Petitioner's proposed research seeks to benefit our country "by solving problems of wind erosion which could cause land degradation, and crop destruction that could lead to hunger, along with health risks to humans and animals." In addition, the Petitioner submitted a letter

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ The Petitioner received a Ph.D. in Biological and Agricultural Engineering from [REDACTED] in August 2015.

⁵ As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we will consider information about his current and former positions to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the *Dhanasar* analytical framework.

from [] Member of Congress, stating that the Petitioner's proposed work is aimed at "prevention of pollution that land degradation poses with [] wind erosion, cattle feedlot, and dryland and agricultural land emissions during harvesting." He further asserted that the Petitioner's undertaking "offers the prospect of improved health and well-being of the American people." The Petitioner also presented articles about worsening soil erosion in the Western United States and its creation of more dust in the air, ecosystem losses attributable to desertification, smoke from U.S. wildfires as a health risk for millions of Americans, deteriorating air quality associated with wildfires in the West, and U.S. wildfire smoke death projections. Furthermore, the Petitioner provided documentation indicating that the benefit of his proposed research has broader implications, as the results are disseminated to others in the field through scientific journals and conferences. As the Petitioner has documented both the substantial merit and national importance of his proposed wind erosion research, he has established that he meets the first prong of the *Dhanasar* framework.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner. The record includes documentation of his curriculum vitae, academic credentials, published articles, peer review activity, and memberships. He also offered a list of articles that cited to his published work, and letters of support discussing his work under the guidance of [] and [] at [] and [] at [] University.

The Petitioner contends on appeal that he has "continued his work and research without interruption to the present day notwithstanding his other work as a mathematics teacher." He asserts that he recently "had yet another manuscript accepted for publication in a leading scientific journal, and that he is currently finalizing the manuscript for another publication." Additionally, the Petitioner maintains that his research experience in his specialty, published work, and recommendation letters from experts in the field demonstrate that he is well positioned to advance his proposed endeavor. For the reasons discussed below, the record supports the Director's determination that the evidence is insufficient to demonstrate that the Petitioner is well positioned to advance his proposed research under *Dhanasar*'s second prong.

In letters supporting the petition, several references discussed the Petitioner's research projects at [] and [] University.⁶ For example, regarding the Petitioner's work regarding aerodynamics of wind erosion through [], [] adjunct faculty at [] stated that the Petitioner's findings "helped establish the effects of abrasion on simulated [] that represented []. His studies were important in establishing practices to minimize the effects of wind erosion on agricultural lands and enabl[ing] farmers to learn about controlling such phenomenon." Likewise, [] an adjunct professor at [] and a research agricultural engineer with the United States Department of Agriculture, asserted that the Petitioner "gained valuable experience . . . in wind erosion and CFD modeling research that has contributed significantly to our improved understanding of fundamental wind erosion causes and control." [] and [] did not provide specific examples indicating that the Petitioner's work has affected wind erosion minimization practices or otherwise constitutes a record of success in his field.

⁶ While we discuss a sampling of these letters, we have reviewed and considered each one.

With respect to the Petitioner's research relating to aerodynamic parameters for [redacted] windbreaks, [redacted] professor at [redacted] stated that the Petitioner's work assessed "the importance of maintaining such [redacted] for protecting agricultural lands from wind erosion" and determined "the relative sheltering efficiencies of [redacted] barriers from wind erosion through characterization of particulate matter (dust) emissions that passed through the windbreak." [redacted] further indicated that the Petitioner has extended these "studies by adapting novel techniques in his numerical modeling simulation and validation experiments," but he does not explain how the Petitioner's work has been implemented, utilized, or applauded by others in the field.

Regarding the Petitioner's work involving anthropogenic factors on sediment transport processes in a [redacted] in the [redacted] Desert, [redacted] assistant professor at [redacted] University, asserted that the Petitioner's work investigated the applicability of using [redacted] and [redacted] tracers for aeolian sediment transport . . . to monitor landscape responses to disturbances." While [redacted] stated that this work answered "a series of key questions relating to the interactions among fire, vegetation, and sediment transport processes in [redacted] systems and [their] implications on ecosystem degradation and air quality," he did not offer examples of how the Petitioner's research has influenced the agricultural industry, has served as an impetus for progress or generated positive discourse in his field, or otherwise represents a record of success or progress rendering him well positioned to advance his proposed endeavor.

As it relates to the citation of the Petitioner's work, his appellate submission includes a self-compiled citation list for eight of his research papers, but he did not offer supporting evidence to corroborate his assertions.⁷ This self-compiled information lacks probative value and does not demonstrate citations to his work by others in the field. Moreover, the record does not include comparative statistics indicating how often other wind erosion researchers are cited, nor has the Petitioner otherwise demonstrated that the number of citations received by his published articles reflects a level of interest in his work from relevant parties sufficient to meet *Dhanasar*'s second prong.

Additionally, while the Petitioner contends that he has been "preparing and filing proposals for scientific research funding," he does not offer evidence showing that he has been the recipient of any scientific research grants. In *Dhanasar*, the record established that the petitioner "initiated" or was "the primary award contact on several funded grant proposals" and that he was "the only listed researcher on many of the grants." *Id.* at 893, n.11. Here, the record does not show that the Petitioner has received funding for his research proposals or future projects. With respect to the Petitioner obtaining a research position at a U.S. university or research institute, the record does not contain documentation from any such organization identifying the specific research projects he intends to pursue on the organization's behalf. Without sufficient evidence demonstrating the means or financial support to undertake his proposed wind erosion research in the United States, the Petitioner has not shown that his plan for future activities renders him well positioned to advance his proposed endeavor.⁸

⁷ For example, he did not present copies of the articles that cited to his work or other supporting evidence in the form of citation results from databases or search engines (such as Scopus, Web of Science, or Google Scholar). In addition, many of the claimed citations are self-cites by the Petitioner or his coauthors. Furthermore, many of the listed citations occurred in papers published after the petition's filing date. See 8 C.F.R. § 103.2(b)(1).

⁸ As previously noted, the Petitioner indicated that he is presently working full-time as a mathematics teacher for [redacted]

Regarding his peer review activity, the Petitioner provided emails inviting him to review manuscripts submitted to *Aeolian Research*, *Land Degradation and Development*, *Scientific Reports*, *Catena*, *Biosystems Engineering*, and *Applied Engineering in Agriculture*, but he did not provide evidence showing that he completed these reviews. Regardless, the Petitioner has not demonstrated that occasional participation in the widespread peer review process represents a record of success in his field or that it is otherwise an indication that he is well positioned to advance his research endeavor.

The Petitioner also submitted documentation of his membership in the Philippine Institute of Chemical Engineers, the American Society of Agricultural and Biological Engineers, the American Geophysical Union, and the [redacted] Philippine Student Association. He also presented his certificates of membership for the Phi Kappa Phi Honor Society and the Alpha Epsilon Honor Society. The record, however, does not include evidence demonstrating the significance or level of distinction of these memberships in his field. Nor has the Petitioner established that his memberships are sufficient to show a record of success in his research or a level of interest in his work from relevant parties signifying that he is well positioned to advance his proposed wind erosion research.

The record demonstrates that the Petitioner has conducted, published, and presented research during his graduate studies and professional career, but he has not shown that this work renders him well positioned to advance his proposed research. While we recognize that research must add information to the pool of knowledge in some way in order to be accepted for publication, presentation, funding, or academic credit, not every individual who has performed original research will be found to be well positioned to advance his proposed endeavor. Rather, we examine the factors set forth in *Dhanasar* to determine whether, for instance, the individual's progress towards achieving the goals of the proposed research, record of success in similar efforts, or generation of interest among relevant parties supports such a finding. *Id.* at 890. The Petitioner, however, has not sufficiently demonstrated that his published and presented work has served as an impetus for progress in the agricultural engineering field or that it has generated substantial positive discourse in the environmental science community. Nor does the evidence otherwise show that his work constitutes a record of success or progress in advancing research relating to wind erosion. As the record is insufficient to demonstrate that the Petitioner is well positioned to advance his proposed research endeavor, he has not established that he satisfies the second prong of the *Dhanasar* framework.

C. Balancing Factors to Determine Waiver's Benefit to the United States

As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Here, the Petitioner claims that he is eligible for a waiver due to the importance of his field and the impracticality of labor certification. However, as the Petitioner has not established that he is well positioned to advance his proposed endeavor as required by the second prong of the *Dhanasar* framework, he is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

[redacted] Public Schools. He has not shown that the remaining time he plans to devote to wind erosion research is sufficient to render him well positioned to advance his proposed endeavor.

III. CONCLUSION

As the Petitioner has not met the requisite second prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.